

UNITED STATES DISTRICT COURT  
DISTRICT OF MASSACHUSETTS

PAUL J. McNALLY, as he is TRUSTEE,  
MASSACHUSETTS LABORERS' HEALTH AND  
WELFARE FUND and NEW ENGLAND LABORERS'  
TRAINING TRUST FUND; JAMES MERLONI, JR.,  
as he is TRUSTEE, MASSACHUSETTS LABORERS'  
PENSION FUND and MASSACHUSETTS LEGAL  
SERVICES FUND; MARTIN F. WALSH, as he is  
TRUSTEE, MASSACHUSETTS LABORERS'  
ANNUITY FUND,

Plaintiffs

vs.

J. MICHAEL LANDSCAPING, INC.,  
Defendant

C.A. No. 05-11624-RWZ

**PLAINTIFFS' MOTION FOR PRELIMINARY INJUNCTION**

Upon the Complaint and Exhibits attached thereto and the Affidavit and Memorandum in support of their Motion for Preliminary Injunction, the Plaintiffs, pursuant to §502(a)(3) of the Employee Retirement Income Security Act of 1974, 29 U.S.C. §1132(a)(3), and Rule 65(a), Federal Rules of Civil Procedure, respectfully request this Court to enter a Preliminary Injunction enjoining defendant J. Michael Landscaping, Inc. from refusing to permit an audit of its books and records.

As grounds therefore, Plaintiffs states as follows:

- 1) Based on the foregoing Complaint, Exhibits and Affidavits, Plaintiffs have exhibited a likelihood of success on the merits.
- 2) Unless enjoined by this Court, the defendant will continue to ignore its obligations under the terms of the Employee Retirement Security Act of 1974, as amended ("ERISA"), and of the Restated Agreement and

Declaration of Trust of the Health and Welfare Fund, to which it is bound, to permit auditors to audit its books in order to verify whether it made all required contributions to the appropriate funds.

- 3) There is no adequate remedy at law.
- 4) The Defendant's refusal to permit an audit will result in irreparable injury, loss, and damage to the Plaintiffs.
- 5) The issuance of a preliminary injunction herein will not cause undue inconvenience or loss to the Defendant but will prevent irreparable injury to the Plaintiffs, and would further the public interest.

WHEREFORE, Plaintiffs move this Court to grant a preliminary injunction compelling the Defendant and its agents to permit an audit of its books and records for the period June, 2003 to the present to determine the amount, if any, Defendant owes the Plaintiffs. Plaintiffs further request that they be excused from posting a bond.

Respectfully submitted,

PAUL J. MCNALLY, as he is  
TRUSTEE, MASSACHUSETTS  
LABORERS' HEALTH AND WELFARE  
FUND, et al,

By their attorneys,



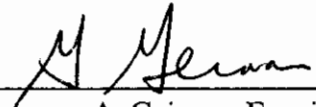
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Dated: August 2, 2005

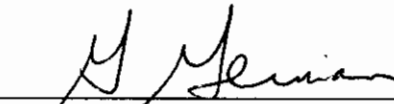
**LOCAL RULE 7.1(A)(2) CERTIFICATION**

Counsel hereby certifies, in accordance with Rule 7.1(A)(2), that prior to filing Plaintiffs' Motion for Preliminary Injunction in this matter he made a good faith effort to communicate with Defendant's counsel in order to resolve this matter, but that his telephone calls were unreturned.

  
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Gregory A. Geiman, Esquire

**CERTIFICATE OF SERVICE**

I hereby certify that the foregoing Plaintiffs' Motion for Preliminary Injunction has been served by first class mail upon the defendant's counsel, Paul J. Hogan at Hogan & Associates, 63 Chatham Street, Boston, MA 02109 this 2 day of August, 2005.

  
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Gregory A. Geiman, Esquire